

ERVIN INTRODUCES EMPLOYEE PRIVACY BILL WITH 50 COSPONSORS

Washington, D.C., April 1, 1971 -- Senator Sam J. Ervin, Jr., (D-N.C.)

Chairman of the Constitutional Rights Subcommittee, today introduced for the third time his bill to protect the privacy and other rights of executive branch employees. The bill, based on long-term Subcommittee studies, was passed by the Senate in the last two Congresses and now has 51 Senate cosponsors.

"Although the privacy of private citizens is receiving increasing legislative attention, the liberties and privacy of citizens who work for government have generally remained in unique isolation from such concern", commented Senator Ervin. "Yet probably no other group of citizens has been so subject to governmental monitoring, investigation and evaluation of their private lives. They have been analyzed, computerized, criticized and all too frequently, tyrannized."

Referring to recent Constitutional Rights Subcommittee hearings on the privacy of all citizens, the Senator said: "We have received reports of well-meaning, but unwarranted surveillance of lawful citizens, of black-lists, of data banks without proper controls, of the misuse of computers and microfilmed records, and other incursions into private lives of people without sufficient cause.

"All across our land, private citizens and government officials alike are awaking to the fact that they must seize control of the information systems and the new technology to assure due process of law. They are realizing that if our society is to remain a free one, they must continuously monitor the exercise of any governmental power which can infringe upon the First Amendment rights of all individuals."

Ervin said the Subcommittee studies show that because of special legal and administrative disabilities which he described, "Federal employees and applicants do not always enjoy due process, privacy and other rights equally with all other citizens."

He noted that they are subjected more than most citizens "to federal management experiments with all of the latest fads in pseudo-scientific instruments and methods for measuring the 'total man', for predicting human behavior, and for attempting to manipulate the emotions and the faculties of individuals in order to guide their thought processes. They are subjected to the changing fashions in follies of supervisors who are bent on achieving some favored personal or management goal through bizarre short cuts or circumvention of established systems for protecting employee rights. Yet their legal rights and remedies are limited or non-existent."

INTRODUCTION OF BILL FOR PROTECTION OF CONSTITUTIONAL RIGHTS OF
GOVERNMENT EMPLOYEES AND TO PREVENT UNWARRANTED INVASIONS OF THEIR PRIVACY

(Made by Senator Ervin in the Senate April 1, 1971)

On behalf of myself and 50 cosponsors, I introduce, for appropriate reference, a bill to protect the civilian employees of the executive branch of the U. S. Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

The other cosponsors of this proposal are: Senators Bayh, Benton, Bible, Brooke, Burdick, Byrd of Virginia, Church, Cook, Dole, Dominick, Eagleton, Fannin, Fong, Goldwater, Gravel, Gurney, Hansen, Hatfield, Hruska, Humphrey, Inouye, Jordan of North Carolina, Jordan of Idaho, McGee, McIntyre, Magnuson, Mathias, Metcalf, Miller, Mondale, Montoya, Moss, Muskie, Nelson, Packwood, Pearson, Percy, Prouty, Proxmire, Randolph, Scott, Sparkman, Spong, Stevens, Taft, Talmadge, Thurmond, Tower, Tunney and Williams.

This is the third Congress to consider this proposal. It has been twice passed by the Senate, first as S. 1035 in the 90th Congress, on September 13, 1967, by approval of 90 members, and then as S. 782 in the last Congress, on May 19, 1970 by unanimous consent. Each time, despite widespread support from the public, from employees, and from members of Congress it has failed in the House Post Office and Civil Service Committee. The bill introduced today is identical to S. 782 as passed by the Senate last year with Committee amendments.

The purpose and background of this measure is spelled out in Senate Report No. 873 of the 91st Congress which describes the hearings before the Constitutional Rights Subcommittee on complaints we received about privacy invasions.

The purpose of this bill is to prohibit indiscriminate requirements that employees and applicants for Government employment disclose their race, religion or national origin; or submit to questioning about their religion, personal relationships or sexual attitudes through interviews, psychological tests, or polygraphs. It prohibits requirements that employees attend Government-sponsored meetings and lectures or participate in outside activities unrelated to their employment; report on their outside activities or undertakings unrelated to their work; support political candidates, or attend political meetings.

It makes it illegal to coerce an employee to buy bonds or make charitable contributions. It prohibits requirements that he disclose his own personal assets, liabilities, or expenditures, or those of any member of his family, unless, in the case of certain specified employees, such items would tend to show a conflict of interest.

It provides a right to have a counsel or other person present, if the employee wishes, at an interview which may lead to disciplinary proceedings.

It accords the right to a civil action in a Federal court for violation or threatened violation of the act.

Finally, it establishes a Board on Employees' Rights to receive and conduct hearings on complaints of violation of the act, and to determine and administer remedies and penalties.

I and the other sponsors of this measure share the conviction that the early passage of the bill, this time by both the Senate and the House, will demonstrate the truth of Victor Hugo's observation that greater than the tread of mighty armies is an idea whose time has come.

The American people have made it clear that the time has indeed come for Congressional action to protect them from governmental interference with their enjoyment of personal privacy and other constitutional rights.

During recent hearings before the Constitutional Rights Subcommittee, we have received reports of well-meaning, but unwarranted surveillance of lawful citizens, of black-lists, of data banks without proper controls, of the misuse of computers and microfilmed records, and other incursions into private lives of people without sufficient cause.

All across our land, private citizens and government officials alike are awaking to the fact that they must seize control of the information systems and the new technology to assure due process of law. They are realizing that if our society is to remain a free one, they must continuously monitor the exercise of any governmental power which can infringe upon the First Amendment rights of all individuals.

Although the privacy of private citizens is receiving increasing legislative attention, the liberties and privacy of citizens who work for government have generally remained in unique isolation from such concern. More than most Americans, the employees of the Federal Government understand the adverse effects on liberty of some of the trends abroad in our land today. Probably no other group of citizens has been so subject to governmental monitoring, investigation and evaluation of their private lives. They have been analyzed, computerized, criticized and all too frequently, tyrannized. Some of this data-gathering on employees and applicants is both necessary and desirable, and is pursued in a worthy cause such as determining suitability for employment or for handling national security information or for promoting better personnel management. On the basis of Subcommittee studies, however, it is my opinion that a goodly portion of the data-gathering and surveillance goes far beyond the needs of government and is prompted by the mere curiosity of some government officials or by the political motives and concerns of whatever Administration is in power at the time.

Since they are, in a sense, a captive group, easily identified, and susceptible to economic coercion to surrender their privacy, employees of government are subjected more than most citizens to federal management experiments with all of the latest fads in pseudo-scientific instruments and methods for measuring the "total man"; for predicting human behavior; and for attempting to manipulate the emotions and the faculties of individuals in order to guide their thought processes.

They are subjected to the changing fashions in follies of supervisors who are bent on achieving some favored personal or management goal through bizarre short cuts or circumvention of established systems for protecting employee rights.

The individual's access to the courts on such matters has been limited, and any administrative remedies have been subject to changing executive orders or agency directives. Employees are confronted with orders that they are not to communicate with members of Congress and they are restricted in their dealings with personnel officers for resolving their problems.

For all of these reasons, employees do not always enjoy due process, privacy, and other rights equally with all other citizens.

Recently, as the Federal Government has seized larger and larger chunks of the economic sector, citizens who work for it have been subjected to economic coercion to surrender their liberties for purposes which have no reasonable relationship to the needs of government. These liberties do, however, have a significant relationship to the health of our free society. If over three million Federal employees and their families can be forced to surrender them without any recourse to the courts, then they can be surrendered by millions of state and local employees. Since the attitudes and practices of the Federal Government are emulated by private industries and organizations, the injustices and tyrannies against employees ignored by Congress today may spell the destruction of the basic liberties of all citizens tomorrow.

This bill does not begin to cure all of the injustices and petty tyrannies to which employees are subject. Rather, it establishes judicial and administrative remedies for certain violations of First Amendment rights of the citizen who may apply for Federal employment or who may work for government.

It is designed to protect that individual in the enjoyment of his freedom of conscience, of his right to speak or not to speak about certain personal matters; of his right to participate or not to participate in the political, economic and social life of his community free of pressure from the Civil Service Commission or from his supervisor.

It assures that employees may keep to themselves what they believe or feel about religion, sex, or family relationships or what they do or do not do in their private lives, that is unrelated to their jobs. It assures also that they will never be forced as free citizens to become the unwilling instruments for imposing unauthorized political, social or economic goals of some administration which happens to be in power at the time in Washington.

In an era dominated not only by scientific technology but by the need for rapid and efficient decision-making on a grand scale, this proposal is a means of reconciling the needs of government with the individual's right to retain certain areas of his thoughts, beliefs, words and actions free of unwarranted governmental interference.

Such legislation has been needed in the past to help protect our liberties. It is needed now. If the present trends in the Federal Government are any indication, it will be more vitally needed in the future.

Although the bill is based primarily on the excesses of previous administrations, there is no guarantee that these practices will not be revived, and there is no evidence that some of them are not continuing.

If history teaches us anything, it teaches us that the events of the past will be repeated. With regard to the practices covered by this proposal, I believe Congress should prevent their reoccurrence by early passage of the bill.